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**FISCAL YEAR 2015  
CHILD AND ADULT CARE FOOD PROGRAM  
OPERATIONAL MEMORANDUM #26**

**TO:** Child and Adult Care Food Program Institutions

**FROM:** Marla J. Moss, Director  
Office of School Support Services

**DATE:** June 30, 2015

**SUBJECT: Denial of Applications and Termination of Agreements 7 CFR 226.6(c)**

The Michigan Department of Education's (MDE) Child and Adult Care Food Program (CACFP) will follow the procedures below when it is determined that an institution is out of compliance with the federal regulations governing the CACFP. MDE could declare an institution seriously deficient in their operation of the CACFP in the following three situations:

**1. Denial of a New Institution's Application**

If, in reviewing a new institution's application, MDE determines that the institution has committed one or more serious deficiency listed below, action will be taken to deny the new institution's application and disqualify the new institution, the responsible principals, and the responsible individuals.

- a. Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years which would include a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by MDE.
- b. Any other action affecting the institution's ability to administer the program in accordance with program requirements.

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## **2. Denial of a Renewing Institution's Application**

If, in reviewing a renewing institution's application, MDE determines that the institution has committed one or more serious deficiency(ies) listed below, MDE will initiate action to deny the renewing institution's application and to disqualify the renewing institution, the responsible principals, and the responsible individuals.

- a. Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years which would indicate a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by MDE.
- b. Failure to operate the program in conformance with the performance standards.
- c. Failure to comply with the bid procedures and contract requirements of applicable federal procurement regulations.
- d. Use of a food service management company that is in violation of health codes.
- e. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with 226.15(f).
- f. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with 226.16(d).
- g. Failure to perform any of the other financial and administrative responsibilities required.
- h. Failure to properly implement and administer the day care home termination and administrative review.
- i. Any other action affecting the institution's ability to administer the program in accordance with program requirements.

## **3. Termination of a Participating Institution's Agreement**

If it is determined that a participating institution has committed one or more of the following serious deficiencies, action will be initiated to terminate the agreement of the participating institution and to disqualify the institution and any responsible principals and responsible individuals.

- a. Submission of false information on the institutions application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years which would indicate a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by MDE.
- b. Permitting an individual who is on the National Disqualified List (NDL) to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home.
- c. Failure to operate the program in conformance with the Federal performance standards.

- d. Failure to comply with the bid procedures and contract requirements of applicable federal procurement regulations.
- e. Failure to return to MDE any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments.
- f. Failure to maintain adequate records.
- g. Failure to adjust meal orders to conform to variations in the number of participants.
- h. Claiming reimbursement for meals not served to participants.
- i. Claiming reimbursement for a significant number of meals that do not meet program requirements.
- j. Use of a food service management company that is in violation of health codes.
- k. Failure of a sponsoring organization to disburse payments to its facilities in accordance with federal regulations or in accordance with its management plan.
- l. Claiming reimbursement for meals served by a proprietary Title XX center during a calendar month in which less than 25 percent of its enrolled participants, or 25 percent of its licensed capacity, whichever is less, were Title XX beneficiaries.
- m. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with federal regulations.
- n. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations.
- o. Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses.
- p. Failure to perform any of the other financial and administrative responsibilities required by federal regulation.
- q. Failure to properly implement and administer the day care home termination and administrative review provisions set forth in the federal regulations.
- r. The fact the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program including the payment of any debts owed.
- s. Conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity.
- t. Any other action affecting the institution's ability to administer the program in accordance with program requirements.

### **Serious Deficiency Process**

#### **A. Notice of Serious Deficiency**

When it is determined that one or more serious deficiencies have been committed, the institution, the responsible principals, and responsible individuals will be notified and given an opportunity to take corrective action. MDE will notify the institution's executive director and the chairman of the board of directors that the institution has been determined seriously deficient. The notice will specify:

- 1. The serious deficiency(ies).
- 2. The actions to be taken to correct the serious deficiency(ies).
- 3. The time allotted to correct the serious deficiency(ies).
- 4. That the serious deficiency determination is not subject to administrative review.

5. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in MDE's proposed termination of the institution's agreement and the proposed disqualification of the institution, the responsible principals, and the responsible individuals.
6. That the institution's voluntary termination of its agreement with MDE after having been notified that it is seriously deficient will still result in the institution's formal termination by MDE and placement of the institution, its responsible principals, and responsible individuals on the NDL.
7. That, if MDE does not possess the date of birth and home address for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth and home address is a condition of corrective action for the institution and/or individual.

## **B. Corrective Action Timeframes**

MDE is prohibited from allowing more than 90 days for corrective action to be completed from the date the institution receives the serious deficiency notice.

If MDE determines that the institution has engaged in unlawful practices, submitted false or fraudulent claims or other information, or has been convicted of or concealed a criminal background, no more than 30 days will be allowed for corrective action to be completed.

For serious deficiencies requiring the long-term revision of management systems or processes, MDE may permit more than 90 days to complete the corrective action as long as a corrective action plan is submitted to and approved by MDE within 90 days (or shorter deadline as MDE may establish). The corrective action must include milestones and a definite completion date that MDE will monitor. The determination of serious deficiency will remain in effect until MDE determines that the serious deficiency(ies) has/have been fully and permanently corrected within the allotted time.

## **C. Successful Corrective Action**

If corrective action is taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to MDE's satisfaction, MDE will notify the executive director, the chairman of the board of directors, the responsible principals, and the responsible individuals that the serious deficiency determination has been temporarily deferred and offer the renewing institution the opportunity to resubmit its application, if necessary.

If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), MDE will continue with the actions against the remaining parties. MDE will conduct an unannounced follow-up review to determine if the serious deficiency(ies) are fully and permanently corrected.

## **D. Proposed Termination and Disqualification**

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), MDE will notify the institution's executive director, the chairman of the board of directors, the responsible principals, and the responsible individuals. The notice will specify:

1. That MDE is proposing to terminate the institution's agreement and to disqualify the institution, the responsible principals, and the responsible individuals.
2. The basis for the actions.
3. That, if the institution voluntarily terminates its agreement after receiving the notice of proposed termination, the institution, the responsible principals, and the responsible individuals will be disqualified.
4. The procedures for seeking an administrative review for the application denial and proposed disqualification.
5. That, unless participation has been suspended, the institution may continue to participate and receive program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

#### **E. Program Payments**

Unless participation has been suspended, MDE will continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency(ies) is corrected or the institution's agreement is terminated, including the period of any administrative review.

#### **F. Agreement Termination and Disqualification**

When the time for requesting an administrative review expires or if the administrative review official upholds MDE's proposed termination and disqualification, MDE will:

1. Notify the institution's executive director, the chairman of the board of directors, the responsible principals, and the responsible individuals that the institution's agreement has been terminated and that that institution, the responsible principals, and the responsible individuals have been disqualified.
2. Update the NDL and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the United States Department of Agriculture (USDA).

#### **G. Removal of Institutions, Principals, and Individuals from the NDL**

Once included on the NDL, an institution, the responsible principals, and the responsible individuals remain on the list for seven years. However, if the institution, the responsible principal, or the responsible individual has failed to repay debts owed under the program, they will remain on the list until the debt has been repaid.

If after seven years or until such time as United States Department of Agriculture's (USDA's) Food and Nutrition Service (FNS), in consultation with MDE, determines that the serious deficiency that led to the placement on the list has been corrected, the institution, the responsible principals, and/or the responsible individuals may reapply to participate in the CACFP. The serious deficiency(ies) that led to the placement on the list must still be corrected and a written corrective action plan to fully and permanently correct all serious deficiency(ies) must be submitted and approved prior to being approved for participation.

## **Suspension of an Institution's Participation: Imminent Threat to Health or Safety**

If MDE, local health, or licensing officials cite an institution for serious health or safety violations, the serious deficiency process is escalated. MDE will immediately suspend the institution's program participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution, the responsible principals, and the responsible individuals prior to any formal action to revoke the institution's license or approval. If MDE determines that there is an imminent threat to the health or safety of participants at an institution, or that the institution has engaged in activities that threaten the public health or safety, MDE will immediately notify the appropriate state or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. For SDs in this category, the following steps will be taken:

### **A. Notice of Suspension, Serious Deficiency, Proposed Termination, and Proposed Disqualification**

MDE will notify the institution's executive director and the chairman of the board of directors that the institution has been determined to be seriously deficient, and that MDE proposes to terminate the institution's agreement and to disqualify the institution, the responsible principals, and the responsible individuals. The notice will identify the responsible principals and the responsible individuals and be sent to those persons as well. The institution, the responsible principals, and the responsible individuals will be added to the NDL along with the basis for the serious deficiency determination and notice will be sent to USDA. The notice will also specify:

1. That MDE is suspending the institution's participation (including program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution, the responsible principals, and the responsible individuals.
2. The serious deficiency(ies).
3. That, if the institution voluntarily terminates its agreement with the MDE after having been notified of the proposed termination, the institution, the responsible principals, and the responsible individuals will be disqualified.
4. That the serious deficiency determination is not subject to administrative review.
5. The procedures for seeking an administrative review of the proposed termination and proposed disqualification.
6. That, if the administrative review official overturns the proposed termination and proposed disqualification, the suspension will be deferred and the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

### **B. Agreement Termination and Disqualification**

If the time for requesting an administrative review expires or if the administrative official upholds MDE's proposed termination and disqualification, MDE will:

1. Notify the institution's executive director, the chairman of the board of directors, the responsible principals, and the responsible individuals that the

- institution's agreement has been terminated and that the institution, the responsible principals, and the responsible individuals have been disqualified.
2. Update the NDL and provide a copy of the notice, address, and date of birth for each responsible principal and responsible individual to the USDA.

### **C. Program Payments**

MDE is prohibited from paying any claims for reimbursement from a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, MDE must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

### **Suspension of an Institution's Participation: False or Fraudulent Claims**

If MDE believes that an institution has knowingly submitted a false or fraudulent claim, MDE **may** initiate action to suspend the institution's participation and **must** initiate action to disqualify the institution, the responsible principals, and responsible individuals. The submission of a false or fraudulent claim constitutes a serious deficiency. The following actions will typically be taken:

#### **A. Proposed Suspension of Participation**

If MDE proposes to suspend an institution's participation due to the institution's submission of a false or fraudulent claim, it will notify the institution's executive director and the chairman of the board of directors that MDE intends to suspend the institution's participation (including all program payments) unless the institution requests a review of the proposed suspension. A copy of the notice will be sent to the USDA. The notice will identify the responsible principals and the responsible individuals and must be sent to those persons as well. The notice must also specify:

1. That MDE is proposing to suspend the institution's participation.
2. That the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice.
3. The effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice).
4. The name, address, and telephone number of the suspension review official who will conduct the suspension review if one is requested.
5. That if the institution wishes to have a suspension review (file review only), it must request a review and submit to the suspension review official written documentation opposing the proposed suspension within ten days of the institution's receipt of the notice.

#### **B. Suspension Review Decision**

If the suspension review official determines that MDE's proposed suspension is not valid, MDE will be prohibited from suspending participation. If the suspension review official determines that MDE's action was valid, MDE must suspend the institution's participation (including all program payments), effective on the date of the suspension review decision. MDE will notify the institution's executive director, the chairman of the board of directors, the responsible principals, and the responsible

individuals that the institution's participation has been suspended. The NDL will be updated and the USDA will be notified. The notice will also include:

1. That MDE is suspending the institution's participation (including program payments).
2. The effective date of the suspension (the date of the suspension review decision).
3. The procedures for seeking an administrative review of the suspension.
4. That if the administrative review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Under no circumstances will the suspension of participation remain in effect for more than 120 days following the suspension review decision.

### **C. Remaining Steps**

The remaining steps for an SD determination related to false and fraudulent claims would follow the Serious Deficiency Process steps B-G.

For questions regarding this memorandum, contact the Child and Adult Care Food Program at 517-373-7391.